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FILED
CLERK OF DISTRICT COURT
DISTRICT OF IDAHO
JAN 10 2003
POCATELLO, IDAHO

Counsel for Pocatello Dental Group, P.C.

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

POCATELLO DENTAL GROUP, P.C.,
an Idaho professional corporation,

Plaintiff,

vs.

INTERDENT SERVICE CORPORATION,
a Washington corporation,

Defendant.

Case No. CTV 03-450-E-BLW

INTERDENT SERVICE CORPORATION,
a Washington corporation,

Counterclaimant,

vs.

**POCATELLO DENTAL
GROUP'S RESPONSE
OPPOSING INTERDENT
SERVICE CORPORATION'S
MOTION TO AMEND
COUNTERCLAIMS/THIRD
PARTY CLAIMS**

POCATELLO DENTAL GROUP, P.C., an
Idaho professional corporation; DWIGHT G.
ROMRIELL, individually; LARRY R.
MISNER, JR., individually; PORTER
SUTTON, individually; ERNEST SUTTON,
individually; GREGORY ROMRIELL,
individually; ERROL ORMOND, individually;
and ARNOLD GOODLIFFE, individually;

Counterdefendants.

COMES NOW Pocatello Dental Group, P.A. (the "Group"), by and through its attorneys of record, and opposes InterDent Service Corporation's (hereinafter "ISC") Motion for Leave of Court to File Amended Counterclaims/Third-Party Claims.

Group hereby adopts and supports Dr. Larry Misner's written opposition to ISC's motion dated September 3, 2004. In addition to the grounds set out in Misner's opposition, the following facts are relevant to ISC's Motion:

1. ISC's Amendment contains factual allegations and substantive claims for relief which were not contained within ISC's Amended and Supplemental Counterclaims and Third Party Complaint filed on April 7, 2004 (hereinafter "April 7th Amendment", Docket No. 100). The April 7th Amendment was filed pursuant to the Court's April 7, 2004 Order granting ISC leave to file the same (Docket 99).¹

2. On April 19, 2004 the Group answered the April 7th Amendment. (Docket No. 106).

3. Pursuant to F.R.C.P. 15, ISC's Amendment can only be filed with leave of the Court or by the Group's written consent. The Group's written consent has not been obtained by ISC.

4. On April 7, 2004 the parties to this litigation, including the Group and ISC, entered into a Stipulated Litigation Plan (hereinafter "Plan," Docket No. 97). The Plan established May 15, 2004 as the "Joinder of Parties and Amendment of Pleadings Cut-off Date". ISC's Motion to Amend was filed beyond the agreed upon "Cut-off Date" and is in violation of the parties' Stipulated Litigation Plan.

¹A summary of the changes was attached to Group's Motion to Strike (Docket No. 120) as Exhibit "A."

5. On April 7, 2004, the Court entered its Scheduling Order (hereinafter "Scheduling Order", Docket No. 101). The Scheduling Order, in paragraph 3, states that "Motions to join additional parties and/or amend the pleadings shall be filed by May 15, 2004." Pursuant to F.R.C.P. 16, ISC must ask the Court for leave to amend the Scheduling Order, and before it is entitled to such relief, ISC must show "good cause" for its delay in timely filing its Motion to Amend and, by implication, seeking an amendment of the Scheduling Order. ISC has done neither in its Motion, and in its motion ISC has ignored its obligations under F.R.C.P. 16.

ISC's Third Claim, "Abuse of Process", is an entirely new claim against the Group. The Third Claim refers to conduct which occurred in 2003, well before the May 15, 2004 deadline for the amendment of pleadings. ISC offers no showing of "good cause" for its failure to allege this particular claim in its original counterclaim or at least before the stipulated May 15, 2004 deadline adopted by the Court in its Scheduling Order.

ISC's Eleventh Claim, "Mutual Mistake", is an entirely new claim against the Group. The Eleventh Claim refers to conduct which occurred in 1996 when the Management Agreement was entered into, well before the May 15, 2004 deadline for the amendment of pleadings. ISC offers no showing of "good cause" for its failure to allege this particular claim in its original counterclaim or at least before the stipulated May 15, 2004 deadline adopted by the Court in its Scheduling Order.

The burden is upon ISC to show good cause for its late effort to avoid the parties' Stipulated Litigation Plan and the Scheduling Order entered by the Court. ISC has failed to even allege good cause in its moving papers. For the forgoing reasons, ISC's Motion to Amend should be denied.

Dated this 9th day of September, 2004.

COOPER & LARSEN, CHTD

Attorneys for Plaintiff

By


Ron Kerl

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 9 day of September, 2004, I served a true and correct copy of the foregoing document as follows:

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